

## Meeting Summary

### URBAN LEVEL OF FLOOD PROTECTION CRITERIA WORK GROUP MEETING

#### California Department of Water Resources

December 13, 2012 - 9:00 am to 12:00 pm

**Location:** West Sacramento Community Center, Community Room, 1075 West Capitol Avenue, West Sacramento, CA 95691

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## Action Items

1. Send any comments to Rebecca Guo: [Rebecca.K.Guo@us.mwhglobal.com](mailto:Rebecca.K.Guo@us.mwhglobal.com)
2. The DWR Design Team will coordinate with DWR legal to review existing case law, and guidelines in response to concerns raised regarding *substantial evidence*.
3. DWR to discuss further the modification to LOC or EVD as they relate to the newly added term *undetermined risk area* (Item 12 of the legislative changes).
4. The DWR Design Team will confer with Mike Mierzwa (DWR) regarding a potential definition for localized flooding discussed during the recent legislative changes.
5. The DWR Design Team will explore organizing sub groups to work through details on urban area definitions, floodplain mapping, and land use law specifics.
6. The DWR Design Team to follow up with a discussion on land use issues associated with local planning entities' concerns that the law as currently written could lead to "claims of a taking" if local land use authorities deny certain permit requests related to previously approved development agreements.
7. Interested Work Group members to provide suggested definitions for *shallow flooding* and *local drainage*.
8. (Completed) A copy of the letter from San Joaquin Area Flood Control Agency to DWR requesting assistance regarding making an urban area determination for Rough and Ready Island, and DWR's response letter, will be distributed to work group members.

## Welcome and Introductions

Rod Mayer (California Department of Water Resources (DWR)) recapped the release of the *Draft Urban Level of Flood Protection (ULOP) Criteria* in April, and the public comment period that followed.

Comments from the public were reviewed and some changes were incorporated into the document, and will be discussed in this meeting.

Meeting facilitator Dorian Fougères (California State University Sacramento, Center for Collaborative Policy (CCP)) reviewed the agenda, handouts, and led introductions around the room.

## Update on Recent Legislative Amendments

Mr. Mayer described the *Draft ULOP Criteria* as being the criteria specified per Senate Bill (SB) 5 (2007) needed to make a finding regarding an urban level of flood protection. Some key challenges that were highlighted in the *Draft ULOP Criteria* have now been addressed in SB 1278 and Assembly Bill (AB) 1965 (2012), and may be refined further in future legislation. Meeting participants were directed to the FloodSAFE website for an electronic copy of the *Draft ULOP Criteria*.

An overview of the potential effects of SB 1278 and AB 1965 on the *Draft ULOP Criteria* was given, and participants received a handout. Mr. Mayer walked through the handout, while Rebecca Guo (MWH) displayed the legislative text on a projected screen for the audience to see. Discussion was integrated throughout the presentation (Item numbers correspond to handout numbering):

### Specific Comments on SB 1278 Legislative Changes that were not Captured in the Handout

#### Item 3. Adds definition for “undetermined risk area”

- One commenter asked whether a FEMA zone X (shaded) is subject to ULOP requirements. Rod explained that zone X (shaded) is considered an area of moderate hazard, and is subject to ULOP requirements.

#### Item 4. Modifies “urban level of flood protection” definition – specifies it only applies to areas subject to flooding from a leveed riverine system. Also excludes shallow flooding and flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency (FEMA) standard of flood protection.

- A meeting participant noted that this item could cause confusion for local entities, especially when it comes to mapping. It will also be a challenge for all concerned with implementation when it comes to “local drainage” and “shallow flooding.” Note that this definition was superseded by AB 1965 (see below).

#### Item 8. Adds that an undetermined risk area shall be presumed at risk during 200-year flood unless deemed otherwise by SPFC, NFIP rate map, or finding by a city or county based on a determination of substantial evidence by a local flood agency

- Mr. Mayer questioned the role of the State Plan of Flood Control (SPFC) in this item, noting that it may expand the role of the SPFC. Also, he noted that the National Flood Insurance Program (NFIP) maps, in their current form, do not depict flood hazard zones for the 200-year floodplain.

- A commenter provided background on the legislation: “The context is that cities and counties were unable to say yes or no to projects. For example; what do we (local planning entities) do if they have not yet established a finding? It may not be the most eloquently written piece of legislation, but locals needed to have some requirement for protection.”
- A commenter stated that he thought DWR was unnecessarily defining “substantial evidence” and that this term has been developed over the years, and suggested DWR look into existing case law, and guidelines in referring to *substantial evidence*.
  - **ACTION ITEM:** The DWR Design Team will coordinate with DWR legal to review existing case law, and guidelines in response to concerns raised regarding *substantial evidence*.

**Item 12. Adds that for development agreements, property in undetermined risk area may be found to meet the urban level of flood protection based on substantial evidence**

- Mr. Mayer noted that this amendment is specifically for considering *development agreements* (California Government Code Section 65302.9). The way the criteria are currently written, this has already been offered as an option. The legislation provides another way of getting to the same point, but only for development agreements. DWR thinks that this will require modification of the EVD.
- One commenter noted that we could also add to the LOC, but what is missing is the *undetermined risk area*, which is a locational question, not an evidence question. Ken Kirby (FloodSAFE Executive Advisor) replied that in the view of DWR, it does not change anything in LOC determination – it is more a mechanism for formulating a Finding.
- Discussion on Item 12 concluded with an agreement that an action item would be recorded to follow up on this interpretation of modification to LOC or EVD.
  - **ACTION ITEM:** DWR to discuss further the modification to LOC or EVD as they relate to the newly added term *undetermined risk area* (Item 12 of the legislative changes).

**Item 13. Sets due date for DWR to develop 200-year flood plain maps for areas affected by SPFC facilities: July 2, 2013**

- One commenter asked if DWR developed 200-year preliminary maps in 2008. Ricardo Pineda (DWR) answered that DWR did develop the best available maps based on the legislative requirements, based predominantly on information from the 2002 *Sacramento-San Joaquin River Basins Comprehensive Study* with additional supplemental information available at that time.
- Mr. Mayer explained that this new provision does not require DWR to produce the maps that cities and counties may need for making their Findings; the products that DWR will provide are 200-year floodplains for areas that receive protection from the SPFC, if the SPFC facilities do not contain a 200-year flood event.

**Specific Comments on AB 1965 Legislative Changes that were not Captured in the Handout**

**Item 17. Modified SB 1278’s “urban level of flood protection” – Removes “leveed riverine system.” Still excludes shallow flooding and flooding from local drainage, if the FEMA standard is met.**

- Discussion focused on how one might define shallow flooding and local drainage.
  - One commenter provided background from their participation during discussions that led to the drafting of SB 1278; the intent was that rainfall from the watershed that did not contribute to flooding conditions from stream bank overflow would be considered exempt.
  - DWR expressed they expect defining local drainage to be challenging. The DWR Design Team has looked for existing definitions, such as from FEMA, for these terms. DWR is open to help on defining these terms.
- Another commenter shared that the old FEMA requirement is that any area over 640 acres should become certified. Mr. Kirby responded that 640 acres was one potential threshold; DWR is open to discussion on this point.

## **Draft Responses to Public Draft Comments**

Mr. Kirby reviewed responses to public comments on the *Draft ULOP Criteria* and major themes of public comments. A comment log was distributed to work group members in advance of this meeting, and was referenced during Mr. Kirby’s presentation. Comments discussed the following major themes:

- Incorporation of potential legislative amendments into the draft criteria
- Sources of flooding that should be considered
- Availability of 200-year floodplain maps

Mr. Kirby noted that DWR had been considering model language for general plan amendments, and that legislatively mandated 200-year floodplain maps produced by DWR will display SPFC levees and facilities in urban areas.

- Mr. Kirby reviewed a specific comment from Tuolumne County, and responded that cities and counties are not required to impose conditions on every new development. He stated that there are “three options” for every land use decision, and imposing conditions is only one of the three avenues available for use by cities and counties.
- Regarding a question about the requirement of locals to follow the draft criteria, Mr. Kirby responded that DWR is proposing what it thinks is responsible to fulfill the intent of 200-year level of flood protection and provide clarity for cities and counties and other stakeholders to demonstrate the urban level of flood protection with confidence. The law says that locals must follow the criteria, or be consistent with it. Cities and counties therefore have the ability to do something else. Further discussion about the idea of “consistent with” followed, and it was noted that DWR appreciates the concern over potentially unintended restrictions imposed onto cities and counties through the criteria. The DWR Design Team will continue to work toward a balanced approach in the criteria.

- The *Urban Levee Design Criteria* (ULDC) – which is incorporated by reference into the *Draft ULOP Criteria* – were adopted by the Central Valley Flood Protection Board (Board) in May 2012, and DWR intends to convert these to regulations, but no steps have been taken yet.
- DWR intends to complete another version of the *Draft ULOP Criteria* by July 2, 2013 (corresponds to map development schedule).

Melinda Terry, California Central Valley Flood Control Association (CCVFCA), provided additional comments summarizing written comments submitted to DWR via a letter dated December 12, 2012, on behalf of a number of organizations. Her comments are paraphrased below in the first person:

- The CCVFCA was one of the signatories to the letter, and one of the contributors to the redline document sent to DWR yesterday. Maybe in the future we need to evaluate what we currently have and find a different starting point. I find it interesting that our comments are similar to the Building Industry Association.
- We are supportive of this whole process, but we do want to make sure it is consistent with other statutory obligations without being redundant to other laws. The “technical processes” will be very helpful for resource constrained cities and counties, but we should keep in mind that they may have other ways. The word criteria may send the wrong impression throughout.
- The discretionary permit issue has already been covered today.
- For urban areas, we want DWR to continue using the FEMA definition of a “developed area,” but not expand it to include areas within the sphere of influence.
- On the extended findings, there may be something that needs to be set in place by locals, but that is different than a mandate.
- On the expert panel: the mandate is something that leaves no discretion. In our mind, there are simple fixes to the tone and how it is laid out.
- For California State Association of Counties (CSAC), and League of California Cities, Items 7 and 8 are going to be a big concern. Again, we look forward to walking through our comments side by side with your document in the future.
- Substantial evidence is another major concern; we should avoid those types of legal issues to make this document work.
- A follow-up commenter stated that the League of California Cities and CSAC support Ms. Terry’s comments.

Mr. Kirby thanked Ms. Terry for the effort and input for providing specific written comments, and noted that the DWR Design Team will consider the totality of the comments carefully and respond to their comments at a future date.

## Changes to Criteria

Mr. Kirby provided an overview of the new definitions in the legislation. SB 1278 and AB 1965 modified and added the following definitions:

- National FEMA standard of flood protection

- Nonurbanized area
- Undetermined risk area
- Urban level of flood protection

A commenter stated the following:

- A commenter noted that language was proposed by DWR to define “local drainage” during drafting, and the DWR Design Team may want to confer with Mike Mierzwa (DWR) on a definition of localized flooding.
  - **ACTION ITEM:** The DWR Design Team will confer with Mr. Mierzwa regarding a potential definition for localized flooding discussed during the recent legislative changes.

## Process for Developing Required Floodplain Maps by DWR

Jon Ericson (DWR) discussed the ongoing process for developing the floodplain maps required by SB 1278. He began with an overview of the Central Valley Floodplain Evaluation & Delineation (CVFED) Program, and CVFED Deliverables.

- Phase 1 – Central Valley Topography Acquisition
- Phase 2 – Central valley Hydraulic Evaluation
- Phase 3 – Central Valley Floodplain Delineation

Mr. Ericson summarized the 2012 Central Valley Flood Protection Plan (CVFPP) and the proposed State Systemwide Investment Approach (SSIA) as context for the mapping efforts at DWR. He then discussed deliverables for the required floodplain maps in the presentation. He reviewed the next steps, and outlined the process going forward. Discussion was interspersed during the presentation:

- One commenter asked about the urban areas that would be included in the maps DWR is producing. He stated that Manteca should be included.
- A commenter asked: “If the facilities meet the ULDC standards, do you still fail?” Mr. Ericson responded “Yes, the maps are in the event of a failure, regardless of the criteria. These maps are not the maps you will need to demonstrate 200-year protection.”
- DWR has a legislative requirement of what it needs to produce, but the CVFED team will do its best to complete the preliminary maps before the July 2, 2013 due date, as required. There are a lot of new assumptions that need consideration before completing these CVFED maps. DWR is open to the potential of providing additional assistance where possible.
- A pilot study for five urban areas (Chico, Yuba City, Davis, Merced, and Stockton) is being run to configure the set-up of hydraulic models. The team anticipates initiating a community technical engagement period in early spring for the 10 existing urban areas to provide an opportunity for locals to participate in the review of modeling and mapping assumptions and final model development.

Mr. Ericson concluded by inviting participants to a Central Valley Hydrology Study (CVHS) workshop on Tuesday, December 18, 2012.

## Map Requirements for Criteria

Mr. Kirby also described DWR's intent to refine the criteria for Accepted 200-Year Floodplain Maps. He noted that there were a host of assumptions that needed to be worked on, and that the DWR Design Team is still working through the process. He asked who among the meeting participants would be interested in participating in this effort.

Discussion followed the PowerPoint presentation:

- Mr. Kirby polled the room to see how many would be interested in forming a sub-team dedicated to this topic. Interest was substantial, and an action item followed to develop a small team to discuss potential criteria for Accepted 200-Year Floodplain Maps.
  - **ACTION ITEM:** The DWR Design Team will explore organizing sub groups to work through details on urban area definitions, floodplain mapping, and land use law specifics.
- DWR is required to produce the 200-year floodplain maps that will show what would happen if SPFC facilities fail. They will only show 200-year floodplains for the SPFC, and will not cover urban areas outside of the SPFC. Some areas outside the SPFC will have to comply with the urban level of flood protection requirements, but will not be included in the maps provided in July 2013 – DWR would like to support these unmapped regions as possible.
- In response to a question asked by a meeting participant, DWR confirmed that it is still willing to discuss the potential of a grant program to assist locals in preparing maps that meet help satisfy the requirements related to urban level of flood protection.
  - One participant asked about the budget for this potential grant or for the anticipated mapping efforts. That information was not immediately available, but DWR is looking into these items.
- **ACTION ITEM:** The DWR Design Team to follow up with a discussion on land use issues associated with local planning entities' concerns that the law as currently written could lead to "claims of a taking" if local land use authorities deny certain permit requests related to previously approved development agreements.
- A comment noted that it would be helpful to clarify the definitions of local drainage and shallow flooding as soon as possible for cities and counties. Mr. Mayer responded that it is DWR's intent to begin defining those terms as quickly as possible. An action item was recorded inviting the Work Group members to provide suggested definitions for shallow flooding and local drainage to the DWR Design Team.
  - **ACTION ITEM:** Interested Work Group members to provide suggested definitions for *shallow flooding and local drainage*.

One participant asked about the “Rough and Ready Island Letter.” Mr. Kirby responded: “The letter includes a request from the San Joaquin Area Flood Control Agency to DWR for input on whether the island is an urban area under the requirements. The DWR Design Team appreciates the request and applied the law and current draft criteria to provide DWR’s perspective on the question. This particular situation raises some difficult questions about the interpretation of a developed area and an urban area, but as described in the written response from DWR, the Design Team emphasized that the final determination is within the local jurisdiction, but from DWR’s perspective Rough and Ready Island is an urban area.”

Discussion continued on the Rough and Ready Island letter, sent by the SJAFCA to DWR:

- One commenter stated that Rough and Ready Island is uninhabited, and should not meet the definition of an urban area.
- A commenter asked if DWR felt that the draft criteria were superior to the United States Constitution for Congressional authorized use of a certain property. Mr. Mayer and Mr. Kirby disagreed with that characterization, and decline to offer any preliminary opinions without consulting DWR legal counsel.
- **ACTION ITEM:** (Completed) A copy of the letter from San Joaquin Area Flood Control Agency to DWR requesting assistance regarding making an urban area determination for Rough and Ready Island, and DWR’s response letter, will be distributed to work group members.

Mr. Mayer offered to form a sub-group to discuss the urban/developed area definition further. Mr. Kirby closed the discussion, and noted that much still needed to be worked out. Key topics for updating the criteria include:

- Local Drainage
- Shallow Flooding
- Developed/Urban Area Determinations
- Accepted 200-Year Floodplain Map standards

## Schedule for Developing Criteria

Closing comments and remarks followed a discussion of the schedule for ULOP:

- DWR anticipates offline work in advance of the next Work Group meeting; likely with two Work Group meetings before July 2013.
- Ms. Terry expressed interest in participating further. She added that the CCVFCA has been discussing the issue of calling the ULOP “guidance” with the Board, and a possible public hearing, in the near future.
  - Mr. Kirby responded to the suggestion on using the word “guidance.” Some of the draft criteria may fit that; however, DWR cannot refer to the *Draft ULOP Criteria* as anything other than criteria because of the requirements of the law (see California Government Code Section 65007(n)). Mr. Mayer agreed with Mr. Kirby’s statements related to



“criteria.” He agreed with the suggestion to add clarifying language within the Criteria that cities and counties also have the option to make their determinations using criteria consistent with DWR’s criteria. He noted that FEMA criteria apply in the nonurbanized areas.

- One comment from a participant asked for a “sub-group” stakeholder process similar to ULDC as a proposed approach for ULOP.
- Some discussion regarding DWR’s development of draft criteria took place. Mr. Kirby responded that the procedural criteria from the ULDC were moved to the draft criteria. DWR has talked to the Office of Administrative Law (OAL) and legal counsel and feels that inclusion of procedural criteria is appropriate to fulfill the intent of the law.

Mr. Mayer thanked all of the meeting participants for attending the meeting and offering their input and closed the meetings with the following next steps:

- Work Group members were invited to offer suggested definitions for shallow flooding and local drainage.
- The DWR Design Team will be reviewing the new comments and the letter received yesterday.
- The DWR Design Team is going to consider developing sub groups in respect to urban area definitions, floodplain mapping, and land use law specifics.

## Attendance

1. Sean Bechta, Ascent Environmental
2. George Booth, County of Sacramento
3. Richard Burgi, City of Chico
4. Jami Childress-Byers, California Emergency Management Agency
5. Roger Churchwell, SJAFCA
6. Andrea Clark, Downey Brand
7. Mark Cocke, City of Woodland
8. Tracey Ferguson, Atkins
9. Tom Fossum, Butte County
10. Jim Giottonini, SJAFCA
11. Pal Hegedus, Floodplain Management Association
12. Hoa Ly, DWR
13. John Maguire, San Joaquin County
14. Glenn McPherson, Atkins
15. Scott Morgan, Governor's Office of Planning and Research
16. Jim Nelson, Storm Drainage Consulting/City of Tracy
17. Barry O'Regan, Peterson Brustad, Inc.
18. Connie Perkins, City of Sacramento
19. Dave Peterson, Peterson Brustad, Inc.
20. Mary Pitto, Regional Council of Rural Counties
21. Ali Porbaha, Central Valley Flood Protection Board
22. John Powderly, City of West Sacramento
23. Kyra Ross, Emanuels Jones and Associates

24. Melinda Terry, California Central Valley Flood Control Association
25. Darren Wilson, City of Elk Grove
26. Interested member of the public (anonymous)

### Project Team

27. Rebecca Guo, MWH
28. Ken Kirby, DWR Advisory
29. Rod Mayer, DWR
30. Allan Oto, DWR
31. Ricardo Pineda, DWR
32. Yung-Hsin Sun, MWH

### Facilitation Team

33. Joshua Biggs, MWH
34. Dorian Fougères, CCP

### CVHS/CVFED Team (Topic Briefing)

35. Jon Ericson, DWR
36. David Ford, David Ford Consulting Engineers
37. Paul Marshall, DWR
38. Judy Soutiere, US Army Corp. of Engineers